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| 33171 | 7590 | 02/02/2006 | EXAMINER | |
| KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023 | | | CASTELLANO, STEPHEN J | |
| | | ART UNIT | PAPER NUMBER | |
| | | 3727 | | |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/891,948

MAILED

Filing Date: June 25, 2001

FEB 02 2006

Appellant(s): APPS, WILLIAM P.

Group 3700

Stephanie Mansfield
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 9, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on April 15, 2004 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-36 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

| | | |
|-----------|----------------|---------|
| 6,079,554 | HAMMETT et al. | 06-2000 |
| 6,073,793 | APPS et al. | 06-2000 |
| 6,047,844 | MCGRATH | 04-2000 |
| 5,660,279 | APPS et al. | 08-1997 |
| 4,978,002 | APPS et al. | 12-1990 |
| 2,928,530 | SAUEY | 03-1960 |

(10) Grounds of Rejection

The following ground(s) of rejection as stated in the final rejection mailed October 9, 2003 as paper No. 13 are applicable to the appealed claims:

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('279) (Apps) in view of Hammett ('554) (Hammett), McGrath ('844) (McGrath) and Sauey.

Apps discloses the invention except for the internal columns appear to be the same height as the wall structure. Hammett, McGrath and Sauey teach internal columns of shorter height than the wall structure.

Hammett specifically teaches a low depth tray for beverage containers and inherently capable of supporting bottles. Hammett includes spacer members 21 and 21A in the form of interior members projecting upwardly from a interior of a wall structure, the interior members have a height less than the height of the uppermost portion (75% or more) of the second pair of opposing walls (side walls), and less than the height of pylons (upstanding pillars or columns 12), and less than the height of the beverage containers loaded in the tray. It would have been obvious to reduce the height of the interior columns in order to maintain sufficient stability while

reducing weight and material costs and to provide wider access to an upper portion of a beverage container located within the pocket so that a user can grasp a larger portion of the container exterior ensuring a firm grip of the container before it is lifted from the tray.

McGrath specifically teaches end walls of greater height than the interior columns. Insofar as the end walls are a pair of opposite walls with a length, then it would have been obvious to apply the end wall teaching of McGrath to add handles to the side walls and to increase the height of the side walls to be above the interior member height in order to enhance the grasping of the side wall, thereby enhancing handling of the tray when access to the end wall is inconvenient.

Sauey specifically teaches a low depth tray for shotgun shells and is inherently capable of supporting bottles. Sauey includes finger-like depressions 31, arcuate protuberances 32 and hemispherical end portions 34 which collectively define an interior member projecting upwardly from an interior of the wall structure and connected to the divider walls, the at least one interior member having a height less than the height of the uppermost portion of the second pair of opposed walls (side walls). It would have been obvious to reduce the height of the interior members in order to reduce weight and material cost while maintaining a means to guide and support objects placed within the compartments (pockets) of the tray.

Claims 1-10, 12-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('793) or Apps et al. ('002) in view of Hammett ('554) (Hammett), McGrath ('844) (McGrath) and Sauey.

The Apps references disclose the invention except for the internal columns appear to be the same height as the wall structure. Hammett, McGrath and Sauey teach internal columns of shorter height than the wall structure.

Hammett specifically teaches a low depth tray for beverage containers and inherently capable of supporting bottles. Hammett includes spacer members 21 and 21A in the form of interior members projecting upwardly from a interior of a wall structure, the interior members have a height less than the height of the uppermost portion (75% or more) of the second pair of opposing walls (side walls), and less than the height of pylons (upstanding pillars or columns 12), and less than the height of the beverage containers loaded in the tray. It would have been obvious to reduce the height of the interior columns in order to maintain sufficient stability while reducing weight and material costs and to provide wider access to an upper portion of a beverage container located within the pocket so that a user can grasp a larger portion of the container exterior ensuring a firm grip of the container before it is lifted from the tray.

McGrath specifically teaches end walls of greater height than the interior columns. Insofar as the end walls are a pair of opposite walls with a length, then it would have been obvious to apply the end wall teaching of McGrath to add handles to the side walls and to increase the height of the side walls to be above the interior member height in order to enhance the grasping of the side wall, thereby enhancing handling of the tray when access to the end wall is inconvenient.

Sauey specifically teaches a low depth tray for shotgun shells and is inherently capable of supporting bottles. Sauey includes finger-like depressions 31, arcuate protuberances 32 and hemispherical end portions 34 which collectively define an interior member projecting upwardly

from an interior of the wall structure and connected to the divider walls, the at least one interior member having a height less than the height of the uppermost portion of the second pair of opposed walls (side walls). it would have been obvious to reduce the height of the interior members in order to reduce weight and material cost while maintaining a means to guide and support objects placed within the compartments (pockets) of the tray.

(11) Response to Argument

103 Rejection: Apps '279 in view of Hammett, Sausey and McGrath

The only structure not taught by the primary reference, Apps '279, is the different height or lower height of the interior columns or members. Apps '279 discloses the interior column height being substantially equal to the highest portion of the end walls and side walls at the exterior pylons.

The teaching references, Hammett, McGrath and Sausey, all teach interior columns of lower height than at least one pair of walls. Hammett and Sausey teach that the interior columns are lower in height than both the side walls and end walls. McGrath teaches that the interior columns are shorter in height than one pair of walls. Only one of these references needs to show the limitation and have the proper motivation to be properly combined.

Appellant raises two major points in rebutting this rejection. First, appellant states that the examiner fails to establish a *prima facie* case of obviousness because the suggested combination doesn't teach the invention and there is no motivation or suggestion to combine the references. Second, none of the references recognize the problem solved.

In appellant's rebuttal on the first major point, she sets forth deficiencies in all three of the teaching references. McGrath is first discussed. Appellant admits that McGrath discloses

that the height of the end wall at the handles may be slightly higher than the partition as shown in Fig. 25 and 27 of McGrath in the first sentence of the second paragraph on page 7. The similarities between Apps '279 and McGrath are many, for example, both are low depth, nesting bottle crates of molded plastic with a surrounding wall structure, interior columns, at least one divider and end wall handles. The major difference being that Apps '279 saves weight at upper areas of the side wall with pylons while McGrath saves weight at lower areas of the sidewall with exterior columns extending between the floor and a lower portion of an exterior band. Several modifications could be made to achieve the lower height. First, the end wall handles of Apps '279 could be raised as taught by McGrath to reduce the amount of bending or stooping necessary in lifting a crate from a floor surface. Also, the curvature of the handle of McGrath which alters the height at the center of the handle to be raised above the ends of the handle so that it protrudes upward provides for nesting of the upwardly protruding portion into a recess in the bottom of the handle of an above nested crate as shown in Fig. 26. Second, the raised interior column portions of Apps '279 could be lowered so that more weight is saved and access to the compartments is easier since high extending interior columns are less obtrusive and bottles could be more easily placed without contacting or bumping the tops of the interior columns.

Hammatt discloses a can tray which is nested as shown in Fig. 23, the spacer members 21 and 21A define interior columns clearly of lower height than both side and end walls. Appellant implies that the packaging of cans is non-analogous to bottle packaging but offers no reasoning for such an implication. Can packaging and bottle packaging are extremely similar. Also, appellant concedes that the spacers 21 and 21A function to prevent dislocation and sliding movement and provide greater stability. Column 6, lines 8-10 of Hammatt's specification states

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that the cans are held in their respective seating areas even if the tray is disposed at a relatively steep angle of inclination. It is not reasonable to conclude that the can spacers don't provide lateral support because this is contrary to Hammett's teaching. "Lateral support" is not mentioned in appellant's claims. Hammett discloses an interior column which is of much lower profile than the surrounding wall structure that stabilizes the cans without the assistance of partitions. The columns of such short stature save a considerable amount of weight over columns of a height substantially equal to the wall structures height.

Sauey is analogous art. Shotgun shells are carefully packaged fragile articles. Bottles are fragile. The shotgun shell package or box is very similar with a surrounding wall structure, dividers and interior columns to provide separate pockets for each shell packaged. Support of the shells so that they do not move is of extreme importance. The field of endeavor is the same packaging of fragile articles. The packages of Sauey and Apps '279 are so similar they solve the particular problem encountered, that problem is the design of a light weight yet strong and durable package that holds separate articles so that they do not contact each other or fall from the package.

Appellant's second major point that the references do not recognize the problem or solution achieved is not a requirement of an obviousness rejection. References may be combined for reasons other than for the problem which the present inventor was concerned with the result being the claimed structure. The rejection would still be proper. It seems the major problem of concern is weight in appellant's invention. These references show that weight can be significantly reduced with a lower profile interior column.

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103 Rejection: Apps '793 and Apps '002 in view of Hammett, Sauey and McGrath

Apps '793 and Apps '002 are substantially similar to Apps '279. Appellant doesn't add any new reasoning to what has already been set forth for Apps '279. Therefore, this answer's reasoning submitted for Apps '279 is appropriate for this rejection.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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Primary Examiner
Art Unit 3727

sjc

January 31, 2006

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